

Contents Volume I

Editor	v
Contributing Authors	vii
INTRODUCTION	1
PART I	
General Overview	
CHAPTER 1	
Key Global Tax Concerns	
<i>Peter H. Blessing</i>	1
§1.01 Introduction	3
§1.02 Deal Structure of Acquisitions	3
[A] General	3
[B] Share Transaction	4
[C] Asset Transaction	4
§1.03 Tax Assets and Other Tax Attributes	5
§1.04 Acquisition Agreement – Key Tax Provisions	6
[A] Definition of ‘Taxes’ and of ‘Excluded Taxes’	6
[B] Interaction of Taxes with Purchase Price Adjustment for Changes between Signing and Closing	6
[C] Allocations of Purchase Price	7
[D] Tax Representations and Warranties	8
[E] Covenants Concerning Tax Matters	8
[1] Covenants in Favour of Acquiror	8
[2] Covenants in Favour of Seller (Transferor)	9
[F] Tax Indemnification Provisions and Related Provisions	10
[G] Conveyance Taxes	10

	[H] Cooperation and Record Retention	10
§1.05	Additional Acquiror Considerations	11
	[A] Due Diligence	11
	[B] Financing Considerations	11
	[C] Acquisition Structure of Acquiror	12
	[D] Post-acquisition Structuring	13
§1.06	Process	13
	[A] Introduction	13
	[B] Importance of Early Counseling of Client's Deal Personnel	14
	[C] Allocation/Coordination of Tax Advisor Roles	14
	[D] High Level Structuring	15
	[E] Electronic Data Room	15
	[F] Acquisition Document	15
	[1] Single Bidder	15
	[2] Auction	15
	[3] Alternative Bids	16
	[G] Negotiation of Open Points	16
	[H] Preparation of Disclosure Schedule	16
	[I] Closing (Completion)	17

CHAPTER 2

Due Diligence

Peter H. Blessing

		1
§2.01	Introduction	3
§2.02	Target's Tax Exposures, Tax Assets and Tax Attributes	3
	[A] Identify Tax Exposures	3
	[1] General/Financial Accounting Standards	3
	[2] Direct Taxes	5
	[3] Indirect Taxes	5
	[4] Withholding Taxes	5
	[5] Employee Taxes	5
	[6] Interest Charge	5
	[7] Carry Back Potential	6
	[8] Tax Indemnity Given to Third Party	6
	[9] Group Tax Liability	6
	[B] Identify Tax Assets	6
	[1] Rights to Refunds	6
	[2] Loss Carryovers	6
	[3] Credit Carryovers	7
	[4] Carry Back Potential	7
	[C] Identify Other Tax Attributes	7
	[1] Tax Incentives/Tax Holding	7

	[2] Tax Rulings or Accepted Settlement Practice	7
	[3] Fiscal Year	8
	[4] Tax Elections	8
§2.03	Process of Due Diligence	8
	[A] Seller	8
	[B] Acquiror	9
	[C] Considerations of Attorney-Client Privilege and Related Rules	10
	[1] Target's Provision of Privileged Communications to Acquiror	10
	[2] Issues Regarding Acquiror's Due Diligence	11
§2.04	Due Diligence Documentation and Questions Grouped by Subject	11
	[A] General	11
	[B] List of Documentation and Information Typically Sought	11
	[1] General Documentation and Information	12
	[2] Tax Contingency Exposures and Reserves	12
	[3] Tax Examinations and Disputes	13
	[4] Permanent and Timing Differences, Tax Provision, Effective Tax Rate, and Reconciliations	13
	[5] Tax Accounting Issues	14
	[6] Intercompany Transactions (Including Financings) and Transfer Pricing	14
	[7] Consolidated or Combined (or Other Grouping) Return Issues	14
	[8] Withholding and Other Compliance Matters	15
	[9] State/Provincial Income, Franchise, and Trade, Etc., Taxes	15
	[10] Historic Acquisitions, Dispositions and Restructurings by or Involving Target	16
	[11] Employee Plans	16
	[12] Miscellaneous Common Direct Tax and Compliance Exposures	17
	[13] Tax Assets and Attributes	17
	[14] Offshore Cash and Tax Positions	18
	[15] VAT, GST, Sales and Use and Similar Taxes (National and Sub-national)	18
	[16] Real and Personal Property Taxes	19
	[17] Taxes on the Transaction Itself	19
	[18] Effect of Transaction on Other Contracts or Arrangements	19
	[19] Information Regarding Target Tax Planning Strategies	19

CHAPTER 3		
Tax Indemnities		
<i>Peter H. Blessing</i>		1
§3.01 Introduction		3
[A] Purpose and Convention of Seller Indemnification against Pre-closing Taxes in Non-public Sale		3
[B] Situations in Which Seller Indemnification May Not Be Available		4
§3.02 Identify Exposures by Type of Deal		4
[A] Direct Taxes		5
[B] Indirect Taxes		5
[C] Withholding Taxes		5
[D] Fiduciary Taxes		5
[E] Interest Charge		5
[F] Carryback Potential		5
[G] Tax Indemnity Given to Third Party		6
[H] Group Tax Liability		6
[I] Need for Cooperation and Records		6
[J] Credit/FX/Tax Risks from Indemnity Itself		6
[K] Effect on Post-closing Liability if Continued Inclusion in Subgroup with Seller		6
§3.03 Consider Alternative Tax Risk Minimization Approaches		7
[A] Buy "As Is" and Due Diligence		7
[B] Representations and Warranties		7
[C] Indemnity		8
[D] Preclearance with Tax Authorities/Ruling		8
[E] Asset Purchase		9
[1] Bulk Sale and Similar Exemptions to Avoid Certain Seller Tax Obligations		9
[2] Elective Asset Purchase		9
[F] Tax Insurance		9
§3.04 Limits/Efficiency of Indemnity Approach		9
[A] Creditworthiness of Indemnitor		10
[B] Collectability		10
[C] Contractual Ambiguities		10
[D] Adversarial Context of Claim		10
[E] Mechanical Issues Complicating Operation of Indemnity		11
[1] Interaction with Other Items		11
[2] Control of Controversy		11
[F] Effect of Equity and Public Policy		11
[1] Measurement of Damages		12
[2] Statute of Limitations		12

§3.05 Overall Drafting Approach		12
[A] Public Deal, Etc. versus Typical Private Deal		12
[B] Reliance on Representations and Warranties without Indemnity		13
[C] Acquisition of Solely Assets versus Fiscally Transparent Entity versus Corporation		13
[D] Standalone Tax Indemnity Section		14
[E] Tax Reps That Rely on Non-tax Indemnity Provisions		15
§3.06 Interaction with Economic Deal and Financial Statements		15
[A] General		15
[B] Financial Accounts and Tax Reserves		15
[C] Closing Date Statements and Working Capital Adjustment versus Locked Box Approach		17
§3.07 Manner of Dealing with Particular Taxes		18
[A] Definition of Indemnified Taxes		18
[B] State/Province/Local Taxes		18
[C] Foreign Taxes		19
[D] Indirect Taxes		19
[E] Withholding Taxes		19
[F] Payroll Taxes and Employee Plans		20
[1] Payroll and Other Employment-Related Taxes		20
[2] Allocation of Assets and Liabilities		20
[3] Qualified Plan Compliance and Fiduciary Liabilities		20
[4] Pension Under-Funding		21
[5] Government-Sponsored Pension Insurance		21
[G] Liability for Group Taxes		21
[H] Cross-Border Regimes		22
[I] Real Property Regimes		22
[J] Contractual Liability under Indemnity Given by Target		22
§3.08 Benefit of Pre-existing Tax Assets		22
[A] Refunds of Target Taxes		22
[B] Other Tax Assets		23
§3.09 Collateral Issues		24
[A] Apportionment of Taxes during Stub Period		24
[B] Allocation of Purchase Price		25
[C] Timing of Payment of Indemnity		25
[D] Tax Treatment of Indemnity Payment and Adjustment for Net Tax Benefit		26
[E] Planning for Possibility of Post-sale Bankruptcy of Indemnitee, Target or Indemnitor		27
[F] Elections		28
[G] Pre-sale Structuring		28
[H] Seller Restrictions on Post-transactional Behaviour		28

	[I] Agreement on Characterization of Transaction/Tax-Free Transactions	29
	[J] Withholding Obligation of Purchaser	29
	[K] Carryback of Post-closing NOL	29
§3.10	Matters of Procedural Nature	30
	[A] Payment of Current Taxes	30
	[B] Preparation of Tax Returns/Right of Review	30
	[C] Termination of Group Tax-Sharing Arrangements	30
	[D] Control of Contest	30
	[E] Competent Authority Proceedings	32
	[F] Cooperation/Access to Personnel/ Record Retention	32
	[G] Survival (Expiration) of Representations and/or Indemnity	33
	[H] Resolution of Disputes Regarding Tax Indemnities	33
§3.11	Variations in Demerger Context	33
§3.12	Credit Agreements	34
CHAPTER 4		
European Union		
<i>James Smith and Andrew Stuart</i> 1		
§4.01	Treaty on the Functioning of the European Union and the Freedoms	3
	[A] Introduction	3
	[B] The Operation of the Freedoms	4
	[C] Freedom of Establishment	5
	[D] Free Movement of Capital	12
	[E] TFEU and Double Tax Treaties	15
§4.02	EC Directives	17
	[A] Parent/Subsidiary Directive	17
	[B] Cross-Border Mergers Directive	17
	[C] Interest and Royalties Directive	18
	[D] Value Added Tax	19
	[E] Common Consolidated Corporate Tax Base (CCCTB)	21
CHAPTER 5		
Joint Ventures		
<i>Peter H. Blessing</i> 1		
§5.01	Introduction	3
	[A] General	3
	[B] Due Diligence	3
§5.02	Overall Structure	4
	[A] Entity or Not	4
	[B] Legal Form and Jurisdiction of JV Entity	5

	[C] Substructure	6
§5.03	Asset and Liability Transfers to Entity and Financing	6
	[A] General	6
	[B] Contributions of Assets and Assumption of Liabilities	6
	[C] Sale or Disguised Sale of Assets and Distributions Connected to Contributions	7
	[D] License or Lease of Assets	8
	[E] Financing of JV	8
§5.04	Personnel and Compensation Matters	9
	[A] Transfer of Personnel to JV	9
	[B] Equity Compensation of JV Personnel	10
	[C] Service Arrangement between Venturer and JV	10
§5.05	Tax-Optimized Structure of JV Functions	10
§5.06	Tax Treatment of Operations	11
	[A] Profit and Loss	11
	[1] Corporate JV	11
	[2] Partnership JV	11
	[B] Distributions	12
	[1] Corporate JV	12
	[2] Partnership JV	12
	[C] Double Tax Relief	13
§5.07	Transfers of JV Interests	13
§5.08	Exit	14
	[A] Transfer of JV Interest to Co-venturer	14
	[B] Redemption (Retraction) of JV Interest	15
	[C] Wind-Up of Venture	15
CHAPTER 6		
Business Restructurings		
<i>Peter H. Blessing</i> 1		
§6.01	Introduction	1
	[A] Definition and Background	3
	[B] Overview of Typical Business Restructuring	4
§6.02	Approaches to Exit Tax Problem	5
	[A] Overview of Exit Tax Issues	6
	[B] OECD Guidance	7
	[1] Chapter VI	7
	[2] Chapter IX	11
	[C] US Guidance	16
	[1] General	16
	[2] Valuation of IP: Contentious Issues Affecting Business Restructurings	17
	[D] German Business Restructuring Rules	19

§6.03	Restructuring for Centralized Ownership of Intellectual Property/Intangibles	20
	[A] Selection of IP Company	20
	[B] Cross-Border Transfer of IP Generally	21
	[C] Migration/Development of IP	23
	[D] Licensing Issues Including Withholding Tax	25
§6.04	Restructuring of Manufacturing Operations	26
	[A] Identification of Functions, Assets and Risks That Are Moved or Affected	26
	[B] Potential Up-Front Exit Tax/Pricing of Property Transferred	27
	[C] Pricing of Post-restructuring Transactions	29
	[D] Permanent Establishment Issues	30
	[E] Special Issues for US Headed Companies	31
§6.05	Restructuring of Distribution (Sales) Operations	31
	[A] Identification of Functions, Assets and Risks That Are Moved or Affected	31
	[B] Potential Up-Front Exit Tax/Pricing of Property Transferred	32
	[C] Pricing of Post-restructuring Transactions	33
	[D] Permanent Establishment Issues	33
	[E] Ownership of Marketing IP	36
	[F] Special Issues for a US-Headed Group	38
CHAPTER 7		
Corporate Redomiciliations		
<i>Peter H. Blessing</i>		
§7.01	Introduction	3
	[A] General	3
	[B] Reasons for Redomiciliation	4
§7.02	Issues Faced in Considering Redomiciliation	6
	[A] Commercial Issues	6
	[B] Tax Issues	6
	[1] Exit Taxes on Corporation and/or Shareholders	7
	[2] US Anti-Inversion Statute (IRC Section 7874)	8
	[3] Other Tax Issues	9
	[C] Manner of Effecting Redomiciliation	10
	[D] Illustrations of Actual Transactions	11
	[1] Redomiciliation of Enscopl from United States to United Kingdom	12
	[2] Redomiciliation of Brit Insurance from United Kingdom to Netherlands	13
	[3] Redomiciliation of James Hardie Industries NV from Netherlands to Ireland	14

PART 2		
Country Reports		
Argentina		
	<i>Gabriel Gottlib and Fernando M. Vaquero</i>	1
I	INTRODUCTION	3
	[A] Overview of M&A Activity	3
	[B] General Legal System	5
	[C] General Tax Environment	6
	[1] Summary of Argentine Tax System	6
	[2] Income Tax Accounting in the Financial Statements	6
	[D] Types/Classification of Major Business Entities	7
	[1] Legal Classification	7
	[2] Income Tax Classification	9
	[E] Characteristics Unique to Argentina	9
	[1] Foreign Exchange Regulations	9
	[a] Indebtness	10
	[b] Foreign Direct Investment	11
	[c] Profits and Dividends	13
	[2] Directors Responsibility	13
	[a] Tax Responsibility	13
	[b] Others Source of Director's Responsibility	14
II	TAXABLE ACQUISITIONS AND DISPOSITIONS	14
	[A] Sale and Purchase of Shares	14
	[1] Consequence for Selling Stockholders	14
	[2] Consequences for the Acquirer	15
	[3] Consequence for the Target (Argentine Company)	16
	[4] Publicly Held Target versus Privately Held Target	16
	[B] Sale and Purchase of Assets	16
	[1] Legal Issues: Transfer of a Going Concern	16
	[2] Consequences for the Seller	17
	[a] General	17
	[b] Recognition of Income	17
	[c] Roll Over	18
	[3] Consequences for the Buyer	18
	[4] Payment of Purchase Price	19
	[5] Compliance	19
	[C] Treatment of Contingent Purchase Price/Contingent Liabilities	19
	[D] Allocation of Purchase Price	20
	[E] VAT and Other Transfer Taxes	21
	[1] Stock Transfer	21
	[a] Value Added Tax	21
	[b] Tax on Minimum Presumed Income	22

	[c] Personal Assets Tax	23
	[d] Tax on Debits and Credits on Bank Accounts	23
	[e] Turnover Tax	24
	[f] Stamp Tax	24
	[2] Asset transfer	25
	[a] Value Added Tax	25
	[b] Tax on Debits and Credits in Bank Accounts	25
	[c] Turnover Tax	25
	[d] Stamp Tax	26
III	TAX-FREE ACQUISITIONS AND DISPOSITIONS	26
	[A] Types and Requirements	26
	[1] Capital Requirement	28
	(a) Merger	28
	(b) Spin-Off	29
	(c) Sales and Transfers between Entities of the Same Economic Group	29
	[2] Maintenance of Capital	29
	[3] Continuity of Activity	30
	[4] Report to Tax Authority	30
	[5] Publication and Registration Formalities	30
	[6] Active Entities	30
	[7] Same or Related Activities	30
	[a] Passive and Active Income	31
	[b] Holding Activity	32
	[8] Requirement for the Transfer of Accumulated Tax Losses	32
	[a] Interpretation of the 80% Requirement	32
	[b] Entities That Must Fulfill This Requirement	34
	[c] Transfer of Shares between Entities of the Same Economic Group	34
	[d] Transfer of Shares to a Guarantee Trust	34
	[B] Issues Regarding the Sale and Transfer of Assets between Entities That Belong to the Same Economic Group	35
	[1] Additional Requirements	35
	[2] Obligation to Comply with the "Same or Related Activities" Requirement in the Case of a Merger of Entities That Belong to the Same Economic Group	37
	[a] The Tax Authority's Position	38
	[b] The Tax Court's Position	39
	[c] The Court of Appeal's Position	39
	[d] The Supreme Court Position	40
	[C] General Consequences and Objectives	41
	[D] Cross-Border Transfers	41
	[E] Compliance	42
	[F] Real Property Holding Company	42

	[G] Transfer Taxes	42
	[1] Value Added Tax	42
	[2] Tax on Minimum Presumed Income	42
	[3] Stamp Tax	42
	[4] Turnover Tax	43
	[H] Issues of Special Concern in Argentina	43
IV	ATTRIBUTE PRESERVATION AND USAGE	43
	[A] Change in Ownership Impact on Tax Assets	43
	[B] Relaxed Rules Arising from Financial Crisis	44
	[1] 2001 Financial Crisis	44
	[2] Moratorium and Installment Plan for Tax Obligations	44
	[C] Allocation of Compensation and Other Deductions between Pre- and Post-closing Periods	45
	[D] Any Other Issues of Special Concern in Argentina	45
V	DUE DILIGENCE AND CONTRACTUAL TAX PROTECTION	45
	[A] Due Diligence	45
	[B] Tax Indemnification and Other Contractual Provisions	46
VI	FINANCING AND DEBT PUSHDOWN STRATEGIES	46
	[A] Leveraging the Taxable Acquisition, Including Cross-Border Aspects	46
	[1] Interest Payments Withholding Rates	46
	[2] Taxation of Fees in Loan Agreements	46
	[3] Preferential Tax Regime	48
	[4] Foreign Exchange Gains and Losses	50
	[5] Preferred Shares	50
	[6] Arm's Length Interest Rate	51
	[B] Thin Capitalization Rules	52
	[C] Tax Treaty Usage	52
	[D] Debt Pushdown Strategies	54
	[E] Other Ways of Maximizing Tax Deductibility of Interest and Acquisition Expenses	55
VII	DEALING WITH COMPENSATION PLANS	56
	[A] Treatment and Issues in M&A Context	56
	[B] Any Other Issues of Special Concern in Argentina	57
VIII	GROUPING	57
	[A] Consolidation for Tax Purposes	57
	[B] Departure of Group Member	58
IX	PLANNING WITH INTANGIBLES	58
	[A] Local Regime	58
	[B] Any Other Issues of Special Concern in Argentina	58
X	INTERNAL RESTRUCTURING INVOLVING ARGENTINE TARGET	60
XI	TARGET BREAKUP OR OTHER DISPOSITION OF UNWANTED ASSETS	60
XII	DEMERGERS	60

	[A] Domestic Treatment and Issues	60
	[B] Cross-Border Treatment and Issues	61
	[C] Any Other Issues of Special Concern in Argentina	61
XIII	SUBSIDIARY LIQUIDATIONS	61
	[A] Domestic Treatment and Issues	61
	[B] Cross-Border Treatment and Issues	62
	[C] Any Other Issues of Special Concern in Argentina	62
XIV	JOINT VENTURES	62
	[A] Structuring, Treatment and Issues in Cross-Border Context	62
	[B] Any Other Issues of Special Concern in Argentina	63
XV	EQUITY AND DEBT RESTRUCTURING	63
	[A] Debt Modifications	63
	[1] Introduction	63
	[2] Waiver of Principal or Interest Due	63
	[3] Payments Deferrals	64
	[4] Conversion of Debt in Equity	64
	[5] Restructuring of Negotiable Obligations	65
	[B] Equity Modifications	65
	[1] Capital Contribution	65
	[2] Issuance of Shares at Premium	65
	[3] Capital Reduction	65
	[C] Any Other Issues of Special Concern in Argentina	65
	[1] Reorganization Proceedings	65
	[2] Bad Debts	66
XVI	CORPORATE EXPATRIATIONS	67
XVII	BUSINESS RESTRUCTURING	67
XVIII	ARGENTINE CORPORATION AS ACQUISITION VEHICLE FOR FOREIGN TARGET	70
	[A] Taxation of Foreign Entities	70
	[B] Double Tax Relief System	71
	[C] Financing the Acquisition	71
Australia		
<i>Richard Hendriks and Richard Vann</i>		
I	INTRODUCTION	3
	[A] General Tax Environment	3
	[B] Types/Classification of Major Business Entities	5
	[C] Business Trusts in Australia	6
	[1] Corporate Unit Trusts: Div 6B Trusts	7
	[2] Public Trading Trusts: Div 6C Trusts	7
	[3] Managed Investment Trust Regime	8
	[D] Calculation and Payment of Tax	9
	[1] Taxable Income	9

	[2] Income Year	9
	[3] Tax Returns and Payments	9
	[4] GST	10
II	TAXABLE ACQUISITIONS AND DISPOSITIONS	11
	[A] Sale and Purchase of Shares	11
	[1] Consequences for Selling Shareholders	11
	[2] Consequences for Acquiror	12
	[3] Sale or Acquisition of Shares by a Consolidated Group	12
	[a] Tax Cost Setting of the Target's Assets on Acquisition	12
	[b] Acquisition from a Consolidated Group	12
	[4] Goods and Services Tax	13
	[B] Taxable Acquisition/Disposition of Australian Entities Assets	14
	[1] Trading Stock	14
	[2] Depreciating Assets	15
	[3] Capital Assets	15
	[4] Revenue Assets	17
	[5] Liabilities	17
	[6] Consequences for Seller	18
	[7] Consequences of Asset Sale to Buyer	19
	[8] Indemnification Payments by Seller	20
	[9] Special Consideration for Asset Sales between Related Corporations	20
	[a] Companies That Are Subsidiary Members of a Tax Consolidated Group	20
	[b] Non-resident Companies in a Wholly Owned Group	21
	[c] Related Companies in Other Circumstances	21
	[C] Sale and Purchase of Partnership Interests	21
	[1] Flow-Through Partnerships	22
	[2] Partnerships Taxed as Companies	22
	[3] Foreign Hybrid Partnerships	22
	[4] Venture Capital Partnerships	23
	[D] Instalment Sales	23
	[E] Treatment of Contingent Purchase Price/Contingent Liabilities, Earn-Outs and Escrows	23
	[1] 'Standard' Earn-Out	24
	[2] 'Reverse' Earn-Outs	26
	[F] Non-resident Sellers	27
	[1] Residence of Companies	27
	[2] Source of Income in Australia	28
	[3] Capital Gains of Non-residents	28
	[G] Goods and Services Tax	29
III	TAX-FREE ACQUISITIONS AND DISPOSITIONS	30
	[A] Tax-Free Disposals of Shares: Scrip-for-Scrip Exchanges	30
	[1] Scrip-for-Scrip Roll-Over for Interests in Companies	31

	[a] Exchange of Shares	31
	[b] The 'Single Arrangement' Requirement	32
	[c] Eighty Per Cent Ownership Requirement	32
	[d] All Voting Share Owners Are Able to Participate	33
	[e] Participation Is on Substantially the Same Terms	33
	[f] The Replacement Share Requirement	33
	[2] Choice of Roll-Over	34
	[3] Additional Requirements for Certain Non-arm's Length Dealings	35
	[4] Scrip-for-Scrip Roll-Over Exchange of Trust Interests	36
	[5] Exceptions and Limitations to Obtaining Scrip-for-Scrip Roll-Over	37
	[a] Foreign Residents	37
	[b] A Capital Gain Cannot Be Otherwise Disregarded	37
	[c] Not Part of the Same Wholly Owned Group	37
	[d] Roll-Over Is Not Available under Other Roll-Over Provisions	38
	[6] Effect of Choosing Scrip-for-Scrip Roll-Over	38
	[a] Consequences for Original Interest Holders in the Target	38
	[b] Consequences for the Bidder	38
	[B] Cross-Border Transfer	39
	[C] Incorporation Roll-Over	40
	[D] Insertion of an Interposed Company	40
	[E] Application of General Anti-avoidance Rules to M&A Activity	40
	[1] Outline of Operation of General Anti-avoidance Rule	40
	[2] Application in the M&A Context	42
IV	ATTRIBUTE PRESERVATION AND USAGE	44
	[A] Tax Loss Preservation and Usage	44
	[1] Overview of Company Loss Rules	44
	[2] Continuity of Ownership Test	45
	[3] Same Business Test	46
	[4] Unrealized Tax Losses	47
	[5] Inter-entity Loss Duplication Rules	48
	[6] Trust Losses	49
	[7] Losses of Australian Branch of Foreign Bank	50
	[B] Imputation Tax Credits	50
	[1] The Company Imputation System	50
	[2] Streaming and Trading in Imputation Credits	51
	[C] Pre-CGT Status of Assets	52
	[D] Other Tax Attributes	52
	[E] Other Issues of Special Concern in Australia	52
	[1] Transfer of Losses to a Tax-Consolidated Group	52
	[a] Bringing Losses into the Consolidated Group	53

	[b] Utilization of Transferred Losses by the Head Company	54
	[c] Other Loss Rules	55
	[2] Imputation Credits	55
	[3] Pre-CGT Status of Assets	55
	[4] Other Tax Attributes	56
V	DUE DILIGENCE AND CONTRACTUAL TAX PROTECTION	56
	[A] Tax Consolidation	56
	[1] Tax Liabilities	56
	[2] Tax Attributes	57
	[B] Other Tax Issues	58
	[1] Recapture of Deferred Gains and Losses	58
	[2] GST	58
VI	FINANCING AND DEBT PUSHDOWN STRATEGIES	58
	[A] Debt and Equity Classification	58
	[1] Debt Interests	59
	[2] Equity Interests	60
	[3] Examples	60
	[B] Interest Deductibility	61
	[1] General Rules Limiting Interest Deductions	61
	[2] Rules Permitting Deduction of Financing Costs That Would Not Be Deductible under General Principles	62
	[3] Thin Capitalization Rules	63
	[4] Arm's Length Interest Rate	64
	[5] Debt Dumping	65
	[C] Australian Withholding Tax	66
	[1] Dividend Withholding Tax	66
	[2] Interest Withholding Tax	66
	[3] Dividends versus Interest Paid to Non-residents	67
VII	DEALING WITH COMPENSATION PLANS	68
	[A] Tax Issues for Employees	68
	[1] Overview	68
	[2] When Is Deferred Taxation Available?	69
	[3] AUD 1,000 Exemption	69
	[4] M&A Considerations	70
	[B] Tax Issues for the Employer	70
	[1] Fringe Benefits Tax	70
	[2] Deductions	70
	[3] Reporting and Withholding Obligations	71
VIII	GROUPING	71
	[A] Group Membership Requirements	72
	[1] Multiple Entry Consolidated Groups	72
	[B] Single Entity Rule	74
	[C] Tax Cost Setting of Assets on Joining Consolidated Group	74

	[D] Leaving the Consolidated Group	76
IX	PLANNING WITH INTANGIBLES	77
	[A] R&D Tax Credits	77
	[B] Transfers of IP out of Australia	77
	[C] Transfer Pricing	77
	[D] CFC Rules	78
X	INTERNAL RESTRUCTURING INVOLVING AUSTRALIAN TARGET	78
	[A] Australian Parent	79
	[1] Consolidation	79
	[2] Imputation	79
	[B] Foreign Parent	80
XI	TARGET BREAKUP OR OTHER DISPOSITIONS OF UNWANTED ASSETS	80
	[A] Australian Parent	80
	[B] Foreign Parent	81
	[C] Demerger Rules	81
XII	DEMERGERS	81
	[A] CGT Requirements of a Demerger	81
	[1] Condition 1: Ownership Interest	82
	[2] Condition 2: Interest in the Head Entity of a Demerger Group	82
	[3] Condition 3: Demerger Happens to Demerger Group?	82
	[a] Restructuring of a Demerger Group	82
	[b] Demerger of 80% of Interests	83
	[c] Nothing Else Acquired	83
	[d] Interest Acquired because of Ownership of Original Interests	84
	[e] Like for Like Interest	84
	[f] Same Ownership Proportion	84
	[g] Same Market Value	84
	[h] Coordination with Other Regimes	84
	[4] Condition 4: CGT Event	85
	[B] CGT Consequences of the Demerger	85
	[C] Dividend Relief	85
	[D] Integrity Provision: Section 45B	86
	[1] Consequences of Section 45B Applying	89
XIII	SUBSIDIARY LIQUIDATIONS	90
	[A] Liquidation outside a Tax Consolidated Group	90
	[1] Capital Gains and Losses	90
	[2] Deemed Dividend for Distribution of Retained Profits	91
	[3] Australian Company Liquidates into Foreign Parent	91
	[4] Foreign Subsidiary Liquidates into Australian Parent	91
	[B] Liquidation within a Tax Consolidated Group	92

XIV	JOINT VENTURES	92
	[A] Unincorporated Joint Ventures	93
	[1] Income Tax	93
	[2] GST	94
	[B] Incorporated Joint Ventures	94
XV	EQUITY AND DEBT RESTRUCTURING	94
	[A] Share Buy-Backs	94
	[1] Participating Shareholder's Perspective	95
	[a] Split between the Capital Component and Dividend Component	95
	[b] Market Value	96
	[c] Dividend Component	96
	[d] Capital Component	97
	[2] Company's Perspective	98
	[3] Anti-avoidance Rules	98
	[a] 45-Day Rule	98
	[b] Section 204-30	99
	[c] Section 177EA	100
	[d] Section 45A	100
	[e] Section 45B	101
	[f] Sub-section 6(4)	101
	[B] Debt Forgiveness	102
	[1] Lender/Creditor	102
	[a] Revenue Account	102
	[b] Capital Account	102
	[c] Non-resident Lender	103
	[d] Subdivision 165-CD	103
	[e] Direct Value Shifting	103
	[2] Borrower/Debtor	104
	[a] Debt Forgiveness as Ordinary Income	104
	[b] Capital Gains Tax	105
	[c] Commercial Debt Forgiveness Provisions	105
	[C] Debt for Equity Swap	108
	[1] Lender/Creditor	108
	[a] Section 63E and 63F	108
	[b] Direct Value Shifting	109
	[c] Market Value Substitution Rule	109
	[d] Exchangeable Interests	110
	[2] Borrower/Debtor	110
	[a] Commercial Debt Forgiveness Provisions: Debt for Equity Swap	110
	[b] Same Share Test and Saving Test	111
	[c] Share Capital Tainting	112

XVI	CORPORATE EXPATRIATIONS	112
	[A] Change of Corporate Residence	112
	[B] Dual Residents	113
	[1] Expatriation Using Tax Treaty Tie-Breakers	113
	[2] Domestic Rules Dealing with Dual Residents	114
	[C] Limitations on Rollovers	114
	[D] Redomiciling Australian Companies	114
	[E] Dual-Listed Companies	115
XVII	BUSINESS RESTRUCTURINGS	116
XVIII	AUSTRALIAN CORPORATION AS ACQUISITION VEHICLE FOR FOREIGN BUSINESSES	116
	[A] Incoming Dividends	116
	[B] Sale of Shares	117
	[C] Australian Company with a Foreign Branch	118
	[D] Deductibility of Funding Costs	118
	[E] Controlled Foreign Company Regime	119
	[1] Control Test	119
	[2] Attribution of Income	120
	[3] Disposal of Shares in a CFC	120
	[4] Reform	121
	[F] Disregarded Entities	121
	[G] Conduit Relief	122
	[H] Foreign Income Tax Offset Regime	122
Belgium		
<i>Werner Heyvaert</i>		
I	INTRODUCTION	3
	[A] General Legal System	8
	[B] General Tax Environment	10
	[C] Characteristics Unique to Belgium	12
	[1] Mechanics of Typical Acquisition	12
	[2] Double Tax Relief System	12
	[a] Treaty Countries	12
	[b] Non-treaty Countries	13
	[3] Controlled Foreign Corporation Regime	14
II	TAXABLE ACQUISITIONS AND DISPOSITIONS	15
	[A] Sale and Purchase of Shares – Holding Company Structure	15
	[1] Asset Deal	15
	[2] Share Deal	17
	[a] Introduction	17
	[b] Holding Company Regime	18
	[i] Introduction	18
	[ii] Corporate Income Tax	18

	[iii] Withholding Tax	27
	[iv] Capital Duty	30
	[v] VAT	30
[3]	Parent as Target Entity – Consequences to Transferor, Transferee and Target	31
	[a] Publicly Held Target	31
	[i] Notion of ‘Publicly Held Target’	31
	[ii] Procedures and Disclosures	31
	[b] Privately Held Target	33
	[i] Part Share Purchase, Part Share Redemption	33
[4]	Real Property Holding Companies	34
[5]	Purchase Price Pushdown (Asset Basis Step-Up)	34
[6]	Subsidiary of Domestic Entity as Target Entity – Consequences to Transferor, Transferee and Target	36
	[a] To the Transferor	36
	[i] Default Rule	36
	[ii] Exceptions	38
	[b] To the Transferee	39
	[c] To the Target	39
[B]	Sale and Purchase of Assets	40
	[1] Consequences for Transferor	40
	[2] Consequences for Transferee	43
[C]	Treatment of Contingent Purchase Price/Contingent Liabilities	43
[D]	Allocation of Purchase Price	45
[E]	VAT and Other Transfer Taxes	45
	[1] Value Added Tax (VAT)	45
	[2] Registration Taxes	47
	[3] IFRS Considerations	48
	[4] Compliance	49
	[a] Regulatory Requirement	49
	[b] Corporate Law Requirement	49
	[c] Tax Notifications and Disclosures	50
	[d] Exceptions	51
III	TAX-FREE ACQUISITIONS AND DISPOSITIONS	52
	[A] Types and Requirements	52
	[1] Share Deals	52
	[2] Asset Deals	52
	[B] General Consequences and Objectives	52
	[1] Share Deals	52
	[2] Asset Deals	53
	[a] Company Law	53
	[b] Tax Law	54
	[i] Conditions for the Rollover Regime to Apply	54
	[ii] Consequences of the Rollover Regime	56

[C]	Cross-Border Transfers	56
[1]	Share Deals	56
[2]	Asset Deals	57
[D]	Transfer Taxes	57
[1]	Share Deal	57
[2]	Asset Deal	57
[E]	Issues of Special Concern in Belgium	57
[1]	IFRS Considerations	57
[2]	EU Considerations	58
[3]	Planning Strategies for Particular Situations	58
[a]	Real Property Holding Companies	58
[b]	Compliance	60
IV	ATTRIBUTE PRESERVATION AND USAGE	60
[A]	Change in Ownership Impact on Tax Assets	60
[B]	Allocation of Compensation and Other Deductions between Pre- and Post-closing Periods	62
[C]	Other Issues of Special Concern in Belgium	64
V	DUE DILIGENCE AND CONTRACTUAL TAX PROTECTION	64
[A]	Due Diligence	64
[1]	Cross-Reference	64
[2]	Issues Unique to the Country	64
[a]	False Independent Contractors	65
[b]	Payments to Undisclosed Beneficiaries	65
[c]	Retained Earnings Converted to Share Capital	65
[B]	Tax Indemnification and Other Contractual Provisions	65
[1]	Issues Unique to the Country	65
VI	FINANCING AND DEBT PUSHDOWN STRATEGIES	66
[A]	Leveraging the Taxable Acquisition, Including Cross-Border Aspects	66
[1]	Double Dip Planning	67
[2]	Thin Cap Rules	67
[a]	The First Formal Thin Cap Rule: Article 198, Section 1, 11° ITA	67
[b]	The Second Formal Thin-Cap Rule: Article 18, 4° ITA	68
[c]	Payments Made to Low Taxed Persons or Entities: Article 307, §1, (3) through (5) ITA	70
[3]	Arm's Length Interest Rate	70
[4]	FX Considerations	71
[5]	Tax Treaty Usage	71
[B]	Debt Pushdown Strategies	73
[1]	No Tax Consolidation	73
[2]	Alternative Debt Pushdown Strategies	73
[a]	Merger between Acquico and Target	73

[b]	Target Borrows to Distribute Retained Earnings and Share Capital to Acquico	75
[i]	Article 49 ITA	75
[ii]	Financial Assistance	76
[iii]	Re-characterization of Sales Proceeds as Dividend Distribution	76
[iv]	Reduction of Notional Interest Deduction	76
[v]	Dividend Withholding Tax	77
[c]	Use BelCo as Leveraged Holding Company	78
[C]	Other Ways of Maximizing Tax Deductibility of Interest and Acquisition Expenses	79
[1]	Double Dip Planning	79
VII	DEALING WITH COMPENSATION PLANS	81
[A]	Treatment and Issues in M&A Context	81
[B]	Any Other Issues of Special Concern in Belgium	81
[1]	Collective Bargaining Agreement No. 32bis: Scope of Application	81
[2]	Consequences of the Transfer for the Individual Employment Contracts	82
[a]	Automatic Transfer of the Employment Relationship	82
[b]	Prohibition to Dismiss	83
[3]	The Duty to Inform and Consult the Employees' Representatives in the Works Council Prior to the Transfer	83
[a]	Information and Consultation Procedure	83
[b]	Timing of the Information and Consultation Procedure	84
[4]	Stock Option Plans	84
VIII	GROUPING	86
IX	PLANNING WITH INTANGIBLES	86
[A]	Local Regime (If Favourable)	86
[B]	Treatment of Transfers Offshore and Licensing Back (If Local Regime Is Unfavourable)	86
[C]	Other Issues of Special Concern in Belgium	87
[1]	Tax Treaty Usage	87
[2]	Migration Generally	87
X	INTERNAL RESTRUCTURING INVOLVING BELGIUM TARGET	87
[A]	Types of Company Amalgamations – Overview	87
[B]	Merger	89
[1]	Merger by Acquisition	89
[2]	Merger by Incorporation	90
[3]	Transaction Equivalent with a Merger by Acquisition	90
[C]	Tax Neutrality of a Merger	90
[1]	Conditions for a Tax Neutral Merger	90
[a]	Surviving Company	90

	[b]	Compliance with Company Law	91
	[c]	Anti-abuse Test	91
	[d]	Retroactivity of a Merger	92
	[2]	Effect of a Tax Neutral Merger	92
	[a]	No Tax on Capital Gains	92
	[b]	Transfer of Secondary Tax Attributes	93
	[c]	Transfer of NOLs	93
	[d]	Parent-Subsidiary Merger	94
	[e]	Boot Payment	94
	[3]	Additional Conditions to be Satisfied in and Effect of a Cross-Border Merger	95
	[a]	Belgian Establishment	95
	[b]	Booked as Untaxed Reserves	95
	[c]	Not Transferred	95
	[d]	Transfer of NOLs	96
	[e]	Special Rules	96
	[D]	Contribution of Assets	96
	[E]	Sale of Assets	97
	[F]	Other Aspects	97
	[1]	Recapture of Losses Claimed	97
	[2]	Taxation of Capital Gains upon Contribution-in-Kind of Intangibles by Individual Taxpayer	97
XI		TARGET BREAKUP OR OTHER DISPOSITION OF UNWANTED ASSETS	98
	[A]	Strategies	98
	[1]	Direct Disposition	98
	[2]	Indirect Disposition	98
XII		DEMERGERS	100
	[A]	Domestic Treatment and Issues	100
	[1]	Requirements for Tax-Free Status Generally	100
	[2]	Planning Techniques	102
	[B]	Cross-Border Issues	102
	[C]	Other Issues of Special Concern in Belgium	102
XIII		SUBSIDIARY LIQUIDATIONS	103
	[A]	Domestic Treatment and Issues	103
	[B]	Cross-Border Treatment and Issues	104
	[1]	Belgian Parent Company Survives – Foreign Subsidiary Company Liquidated	104
	[2]	Foreign Parent Company Survives – Belgian Subsidiary Company Liquidated	105
XIV		JOINT VENTURES	106
	[A]	Tax Transparent Vehicles	107
	[1]	The Interest Groupings	107
	[a]	Legal Aspects	107

	[i]	Introduction	107
	[ii]	Transparent and No Core Business	107
	[iii]	Constitutive Documents	107
	[iv]	Registration	108
	[b]	Accounting Rules	108
	[c]	Tax Aspects	109
	[i]	Direct Tax Aspects	109
	[ii]	Value Added Tax	109
	[iii]	Capital Contribution Tax	110
	[2]	The Temporary Association (TA)	110
	[a]	Legal Aspects	110
	[b]	Tax Aspects	111
	[B]	Non-transparent Vehicles	111
XV		EQUITY AND DEBT RESTRUCTURING	112
	[A]	Debt Modifications	112
	[1]	Subordination of Existing Debt	112
	[2]	Conversion of Debt to Equity	112
	[3]	Forgiveness or Waiver of Debt	113
	[B]	Equity Modifications (Recapitalizations)	114
	[C]	Any Other Issues of Special Concern in Belgium	114
	[1]	Share Buybacks	114
	[2]	Repatriations	114
XVI		CORPORATE EXPATRIATIONS	115
	[A]	Motivating Factors	115
	[B]	Exit Costs	116
XVII		BUSINESS RESTRUCTURING	118
XVIII		BELGIUM CORPORATION AS ACQUISITION VEHICLE FOR FOREIGN TARGET	118
		Brazil	
		<i>Ricardo Luiz Becker and Flávio Veitzman</i>	1
I		INTRODUCTION	3
	[A]	General Tax Environment	3
	[B]	Current Trends	8
II		TAXABLE ACQUISITIONS AND DISPOSITIONS	8
	[A]	Sale of Purchase of Shares	8
	[B]	Sale and Purchase of Assets	10
	[C]	Treatment of Contingent Purchase Price/Contingent Liabilities	10
	[D]	Allocation of Purchase Price	11
	[E]	VAT and Other Transfer Taxes	13
III		TAX-FREE ACQUISITIONS AND DISPOSITIONS	14
	[A]	Types and Requirements	14
	[1]	Merger Transactions	14
	[2]	Share Swap Transaction	15

	[3] Private Equity Fund (Fundo de Investimento em Participações – “FIP”)	16
	[B] Cross-Border Transfers	17
	[C] Transfer Taxes	17
IV	ATTRIBUTE PRESERVATION AND USAGE	18
V	DUE DILIGENCE AND CONTRACTUAL TAX PROTECTION	18
	[A] Due Diligence	18
	[B] Tax Indemnification and Other Contractual Provisions	20
VI	FINANCING AND DEBT PUSHDOWN STRATEGIES	21
VII	DEALING WITH COMPENSATION PLANS	23
	[A] Treatment and Issues in M&A Context	23
	[1] Profit Sharing Plan	24
	[2] Stock Option Plans	26
VIII	GROUPING	27
IX	PLANNING WITH INTANGIBLES	27
X	INTERNAL RESTRUCTURING INVOLVING BRAZILIAN TARGET	28
XI	TARGET BREAKUP OR OTHER DISPOSITION OF UNWANTED ASSETS	28
XII	DEMERGERS	29
	[A] Domestic Treatment and Issues	29
	[B] Cross-Border Treatment and Issues	29
XIII	SUBSIDIARY LIQUIDATIONS	30
	[A] Domestic Treatment and Issues	30
	[B] Cross-Border Treatment and Issues	30
XIV	JOINT VENTURES	31
	[A] Structuring, Treatment and Issues in Cross-Border Context	31
XV	EQUITY AND DEBT RESTRUCTURING	32
	[A] Debt Modifications	32
	[B] Equity Modifications	33
XVI	CORPORATE EXPATRIATIONS/REDOMICILIATIONS	33
XVII	BUSINESS RESTRUCTURINGS	35
XVIII	BRAZILIAN CORPORATION AS ACQUISITION VEHICLE FOR FOREIGN TARGET	35
Canada		
<i>Robert Kopstein, Janette Pantry, Kirsten Kjellander, Soraya M. Jamal, Chris Van Loan, Sabrina Wong and Josh Jones</i>		
		1
I	INTRODUCTION	5
	[A] Overview of Canada	5
	[B] General Legal System	5
	[C] General Tax Environment	6
	[1] Anti-avoidance Rules	8
	[D] Types/Classification of Major Business Entities	9

II	TAXABLE ACQUISITIONS AND DISPOSITIONS	11
	[A] Sale and Purchase of Shares	11
	[1] Consequences for Selling Shareholders	11
	[a] Residents of Canada	11
	[i] \$750,000 Lifetime Capital Gains Exemption	12
	[ii] Capital Dividends	12
	[iii] Capital Gains Stripping: Safe Income Dividends	13
	[iv] Capital Gains Reserve	13
	[b] Non-residents of Canada	14
	[i] Application of Tax Treaties	14
	[ii] Section 116 Clearance Certificates	15
	[iii] Canadian Tax Return Filing Requirements	17
	[2] Consequences for Acquiror	17
	[3] Consequences for Target	18
	[B] Sale and Purchase of Assets	18
	[1] General	18
	[2] Consequences for Seller	18
	[3] Consequences for Acquiror	21
	[C] Sale and Purchase of Partnership Interests	22
	[D] Treatment of Contingent Purchase Price/Contingent Liabilities	22
	[1] Treatment of Contingent Purchase Price	22
	[2] Treatment of Contingent Liabilities	24
	[E] Allocation of Purchase Price	24
	[F] VAT and Other Transfer Taxes	25
III	TAX-FREE ACQUISITIONS AND DISPOSITIONS	25
	[A] Types and Requirements	25
	[1] Tax-Deferred Rollovers Involving Canadian Corporations	25
	[a] Subsection 85(1) Transfer of Property to Corporation by Shareholders	25
	[i] Transferor-Level Consequences	26
	[ii] Transferee-Level Consequences	27
	[b] Section 86 Reorganization	27
	[i] Shareholder-Level Consequences	28
	[ii] Corporate-Level Consequences	30
	[c] Section 51 Convertible Property	30
	[i] Shareholder-Level Consequences	31
	[ii] Corporate-Level Consequences	32
	[d] Section 85.1 Share-for-Share Exchange	32
	[i] Shareholder-Level Consequences	33
	[ii] Acquiror-Level Consequences	33
	[iii] Corporate-Level Consequences	34
	[e] Section 87 Amalgamation	34
	[i] Triangular Amalgamations	37
	[f] Subsection 88(1) Wind-Up	38

	[2] Tax-Deferred Rollovers Involving Canadian Partnerships	39
	[a] Subsection 97(2) Transfer of Property to a Partnership	39
	[i] Transferor-Level Tax Consequences	40
	[ii] Partnership-Level Tax Consequences	40
	[b] Subsection 85(2) Transfer of Property from Partnership to Corporation	40
	[c] Wind-Up of Partnership	41
	[i] Subsection 98(3) Transfer of Property to Partners	41
	[ii] Subsection 85(3) Transfer of Property to Corporation	43
	[iii] Subsection 98(5) Transfer of Property to Sole Proprietorship	44
	[3] Tax-Deferred Rollovers Involving Non-Canadian Corporations	46
	[a] Subsection 85.1(5) Foreign Share for Foreign Share Exchange	46
	[b] Section 86.1 Foreign Spin-Offs	47
	[4] Exchangeable Share Transactions	48
	[B] Cross-Border Transfers	52
	[1] Dispositions by Non-Residents of Canada	52
	[C] Transfer Taxes	52
	[D] Issues of Special Concern in Canada	52
	[1] Treatment of Warrants on Tax-Deferred Transactions	52
IV	ATTRIBUTE PRESERVATION AND USAGE	53
	[A] Change of Ownership Impact on Tax Assets	54
	[1] Deemed Year-End	54
	[2] Restrictions on Loss Utilization	55
	[3] Asset Write-Downs	55
	[4] Election to Offset Losses	56
	[5] Additional Considerations	56
V	DUE DILIGENCE AND CONTRACTUAL TAX PROTECTION	56
	[A] Due Diligence	56
	[B] Tax Indemnification and Other Contractual Provisions	57
	[1] Tax Indemnification – Share Purchase	57
	[2] Restrictive Covenants (e.g., Non-Compete Clauses)	57
VI	FINANCING AND DEBT PUSHDOWN STRATEGIES	58
	[A] Leveraging the Taxable Acquisition, Including Cross-Border Aspects	58
	[1] Maximizing Treaty Benefits in Order to Minimize Canadian Tax	58
	[a] Dividends – Generally	59

	[b] Avoiding Canadian Capital Gains Tax on a Sale of Shares	59
	[c] Partnerships	59
	[2] Choice of Entity in Canada	60
	[a] Branch versus Subsidiary	60
	[i] Canadian Subsidiary-Detailed Considerations	60
	[ii] Canadian Branch-Detailed Considerations	61
	[b] Unlimited Liability Corporations	66
	[c] Partnerships	67
	[3] Financing Considerations	68
	[a] Advantages of Debt Financing	68
	[b] Canadian Tax Issues Relevant to Interest Deductibility	69
	[i] General Considerations	69
	[ii] Section 78 Issues	69
	[iii] Thin Capitalization Rule	69
	[c] Where to Borrow	70
	[d] Guarantees	71
	[i] Downstream Guarantees by Foreign Shareholder	71
	[ii] Upstream Guarantees by Canadian Corporations	71
	[4] Royalty Payments for the Right to Use Technology	72
	[5] Payment of Management Fees and Bonuses to Non-Residents	74
	[6] Distributions to Shareholders	75
	[a] The Importance of Paid-Up Capital	75
	[7] In-Bound to Canada Hybrid Structuring	75
VII	DEALING WITH COMPENSATION PLANS	79
	[A] Treatment and Issues in M&A Context	79
	[1] Tax Deferred Rollover of Stock Options	79
	[2] Cash-Out of Stock Options	80
	[B] Any Other Issues of Special Concern in Canada	81
	[1] Deferred Share Unit Plans	81
	[2] Restricted Share Unit Plans	83
VIII	GROUPING	84
	[A] Requirements	84
	[B] Consequences and Advantages	85
	[1] Loss Utilization Structures	85
	[C] Departure of Group Member	86
IX	PLANNING WITH INTANGIBLES	86
	[A] Local Regime (If Favorable)	86
	[B] Treatment of Transfers Offshore and Licensing Back (If Local Regime Is Unfavorable)	87

X	INTERNAL RESTRUCTURING INVOLVING CANADIAN TARGET	88
	[A] Motivation for Restructuring	88
	[B] Amount of Potential Bump	89
	[C] Bump Denial Rules	90
	[D] Examples of Bump Problems	90
	[E] Typical Non-resident Acquisition Structure for Canadian Target	91
	[1] Background Considerations	91
	[F] Case Study: Restructuring Canadian Target and Sale of Unwanted Target Assets after Closing	92
	[1] Assumed Facts	92
	[2] Acquiror Structure	92
	[3] Pre-acquisition Structure of Acquiror and Canholdco/Target (post restructuring)	93
	[4] Steps	93
	[5] Post-closing Structure	94
XI	TARGET BREAKUP OR OTHER DISPOSITIONS OF UNWANTED ASSETS	94
	[A] General Issues	94
	[B] Strategies	95
	[1] Transfer If High Basis Assets	95
	[2] Instalment Sale	95
	[3] Return of Capital Transactions	95
	[a] Section 86 Share Exchange Spin-Out	96
	[4] Replacement Property Rules	96
XII	DEMURGERS	97
	[A] Domestic Treatment and Issues	97
	[1] Related-Corporation Divisive Reorganization	99
	[a] Assumptions	100
	[b] Objective	100
	[c] Steps	100
	[2] Split-Up Reorganization	100
	[a] Assumptions	101
	[b] Objective	101
	[c] Steps	101
	[3] Spin-Off Reorganization	102
	[a] Assumptions	102
	[b] Objective	102
	[c] Steps	102
XIII	SUBSIDIARY LIQUIDATIONS	103
	[A] Domestic Treatment and Issues	103
	[1] Taxable Liquidation of a Canadian Corporation	103
	[B] Cross-Border Treatment and Issues	104
	[1] Canadian Company Liquidates into Foreign Parent	104
	[2] Foreign Affiliate Liquidates into Canadian Taxpayer	104

XIV	JOINT VENTURES	104
	[A] Structuring, Treatment, and Issues in Cross-Border Context	105
XV	EQUITY AND DEBT RESTRUCTURING	106
	[A] Debt Modifications	107
	[B] Equity Modifications	108
XVI	CORPORATE EXPATRIATIONS	108
XVII	BUSINESS RESTRUCTURINGS	109
XVIII	CANADIAN CORPORATION AS ACQUISITION VEHICLE FOR FOREIGN TARGET	109
	[A] Introduction	109
	[B] Key Concepts	110
	[1] Foreign Affiliate	110
	[2] Controlled Foreign Affiliate	110
	[C] Income Characterization	110
	[1] Foreign Accrual Property Income (FAPI)	111
	[2] Investment Business	112
	[3] Non-qualifying Business	112
	[4] Income from an Active Business	113
	[5] Subparagraph 95(2)(a)(i)	114
	[6] Subparagraph 95(2)(a)(ii)	114
	[a] Income from a Business Other than an Active Business	115
	[7] Foreign Currency-Related Issues	115
	[D] Investments in an FA	116
	[E] Distributions from an FA	117
	[F] Surplus Accounts	117
	[1] Exempt Surplus	118
	[2] Hybrid Surplus	118
	[3] Taxable Surplus	119
	[4] Pre-acquisition Surplus	119
	[5] Designated Treaty Country	119
	[6] Timing and Ordering of Dividends	120
	[G] Anti-avoidance Provisions	121
	[1] Subsection 95(6)	121
	[2] Deemed Dividend on 'Upstream Loans'	122
	[3] Surplus Reclassification	122
	[H] Disposition of Shares of an FA (Section 93)	123
	[I] Foreign Affiliate Reorganizations	123
	[1] Disposition of FA Shares by a Canadian Taxpayer	123
	[2] Disposition of FA Shares by another FA	124
	[3] Liquidation of FA into Canadian Taxpayer	125
	[a] Proposed Amendments	125
	[4] Liquidation of FA into another FA	127
	[5] Foreign Mergers	129

[J]	Canadian Outbound Double Dip Structures	130
[1]	The Tower Structure	131
[2]	The REPO Structure	132
People's Republic of China		
<i>Stephen Nelson and Peng Tao</i>		
I	INTRODUCTION	3
[A]	Overview	3
[B]	General Legal System	3
[C]	General Tax Environment	4
[1]	Overall Tax Climate	4
[2]	The Recent Tax Reforms in China	4
[a]	Fundamental Tax Reform in 1994	4
[b]	Second Round of Tax Reform Beginning in 2003	5
[c]	Pilot VAT Reform Beginning in 2012	5
[3]	Instability in Tax Legislation	6
[4]	Trends	6
[a]	More Balanced and Organized	6
[b]	Increasing Adoption of International Practices (with Chinese characteristics)	7
[c]	Strengthening of Tax Collection	7
[i]	General Anti-avoidance Rules	7
[ii]	Transfer Pricing	8
II	TAXABLE ACQUISITIONS AND DISPOSITIONS	9
[A]	Treatment of Seller and of Target Entity	9
[1]	General Rules on EIT Treatment	9
[2]	Choice of Favorable Tax Treaties	10
[3]	Anti-avoidance Challenges	11
[4]	Requirements for Beneficial Ownership	12
[a]	Basic Framework – Circular 601	12
[b]	Recent Developments – Announcements 30 and Circular 165	13
[5]	Examination of Indirect Transfers	15
[B]	Sale and Purchase of Shares and Sale and Purchase of Assets	17
[1]	Equity Acquisition – Consequences to Transferor, Transferee and Target	17
[a]	Tax Consequences on Transferor	18
[i]	EIT	18
[ii]	Stamp Duty	19
[b]	Tax Consequences on Transferee	19
[i]	EIT	19
[ii]	Stamp Duty	20
[c]	Tax Consequences on Target	20

[2]	Asset Acquisition—Consequences to Transferor and Transferee	20
[a]	Tax Consequences on Transferor	20
[i]	EIT	20
[ii]	Value-Added Tax (“VAT”)	20
[iii]	Business Tax (BT)	21
[iv]	Urban Maintenance and Construction Tax and Educational Surcharges	21
[v]	Land VAT	22
[vi]	Stamp Duty	22
[vii]	Claw Back of Customs Duty and Import VAT	22
[b]	Tax Consequences on Transferee	23
[i]	EIT	23
[ii]	Stamp Duty	23
[iii]	Deed Tax	23
[C]	Allocation of Purchase Price	23
[D]	Vat and Other Transfer Taxes	23
III	TAX-FREE ACQUISITIONS AND DISPOSITIONS	24
[A]	Types and Requirements	24
[1]	EIT Deferral Treatment on Enterprise Restructuring	24
[a]	Tax-Free Restructuring Opportunities prior to 2008	24
[b]	EIT Special Tax Treatment	24
[B]	General Consequences and Objectives	25
[1]	General Criteria for Special Tax Deferral Treatment	25
[a]	Special EIT Deferral Treatment on Equity Acquisition	26
[b]	Special EIT Deferral Treatment on Asset Acquisition	26
[c]	Special EIT Deferral Treatment on Debt Restructuring	27
[d]	Special EIT Deferral Treatment on Merger	27
[e]	Special EIT Deferral Treatment on De-merger	27
[C]	Cross-Border Transfers	28
[D]	Transfer Taxes	29
[E]	Issues of Special Concern In China	29
[1]	Planning Strategies	29
[a]	Offshore Holding Company Restructuring	30
[b]	Treatment of Retained Earnings in Equity Transfer	30
[c]	Merger as an Alternative to Sale	32
[2]	Procedural and Compliance Considerations	32
IV	ATTRIBUTE PRESERVATION AND USAGE	34
[A]	Change in Ownership Impact on Tax Assets	34
[B]	Allocation of Compensation and Other Deductions Between Pre- and Post-Closing Periods	35
[C]	Any Other Issues of Special Concern in China	36
V	DUE DILIGENCE AND CONTRACTUAL TAX PROTECTION	37
[A]	Due Diligence	37

	[B] Tax Indemnities	38
VI	DEALING WITH COMPENSATION PLANS	39
VII	FINANCING AND DEBT PUSHDOWN STRATEGIES	39
	[A] Leveraging the Taxable Acquisition, Including Cross-Border Aspects	39
	[B] Debt Pushdown Restrictions	40
	[1] Registered Capital/Total Investment	40
	[2] Arm's Length Interest Rate	41
	[3] Thin Capitalization	41
	[4] Foreign Exchange Considerations	42
	[a] Registration for Direct Investment	42
	[b] Foreign Debt Registration	43
	[5] Tax Treaties	43
VIII	GROUPING	43
IX	PLANNING WITH INTANGIBLES	44
	[A] Local Regime (If Favorable)	44
	[1] Use of Tax Treaties	44
	[2] Cost Sharing	44
	[3] Purchase Price Allocations of Asset Acquisitions Involving Intangibles	45
	[B] Treatment of Transfers offshore and Licensing Back (If Local Regime is Unfavorable)	46
	[C] Any Other Issues of Special Concern in China	46
X	INTERNAL RESTRUCTURING INVOLVING PRC TARGET	46
XI	TARGET BREAKUP OR OTHER DISPOSITION OF UNWANTED ASSETS	46
XII	DE-MERGERS	46
	[A] Domestic Treatment and Issues	46
	[B] Cross-Border Treatment and Issues	46
	[1] Tax Indemnification Provisions	47
	[C] Any Other Issues of Special Concern in China	47
XIII	SUBSIDIARY LIQUIDATIONS	47
XIV	JOINT VENTURES	48
	[A] Structuring, Treatment and Issues in Cross-Border Context	48
	[1] Overview	48
	[2] Capital Contributions on Formation	50
	[3] Allocation and Taxation of Operation Results	50
	[a] Nonlegal Person CJV	50
	[b] Legal Person JVs	51
	[4] Taxation of Distributions	51
	[a] Allocation of After-Tax Profits	51
	[b] Taxation on Distributions to Shareholders	52
	[c] Double Tax Relief	52
	[5] Exits/Unwind Scenarios	52

	[a] Equity Transfer	52
	[b] Liquidation of the JV	53
	[B] Any Other Issues of Special Concern in China	53
	[1] Foreign Invested Partnership Enterprises	53
XV	EQUITY AND DEBT RESTRUCTURING	54
	[A] Debt Modifications	54
	[1] Consequences Generally	54
	[a] Special Tax Treatment	55
	[B] Equity Modifications	55
	[1] Consequences Generally	55
	[2] General Anti-tax Avoidance Rule	56
	[C] Any Other Issues of Special Concern in China	56
XVI	CORPORATE EXPATRIATIONS/REDOMICILIATIONS	57
XVII	BUSINESS RESTRUCTURINGS	57
	[A] Domestic Entity as Acquisition Vehicle of Foreign Entity	58
	[B] Holding Company Regime	58
	[C] Double Tax Relief System	59
	[D] CFC Regime	60
	[E] Financing	61
XVIII	PRC CORPORATION AS OWNER OR ACQUISITION VEHICLE FOR FOREIGN BUSINESS	62
	Finland	
	<i>Janne Juusela and Sanna Lindqvist</i>	1
I	INTRODUCTION	3
	[A] Overview of Finland	3
	[B] General Legal System	3
	[C] General Tax Environment	3
	[1] EU and the Tax Treaty Network	3
	[2] Finnish Corporate Taxation	4
	[3] Recent Changes and Trends in Finnish Taxation in General	5
	[D] Characteristics Unique to Finland	6
	[1] Classification of Business Entities	6
	[2] General Remarks Relating to Investment in a Finnish Target	6
	[3] Profit Repatriation	7
	[a] Interest Received from a Finnish Target Company	7
	[b] Dividends Received from a Finnish Target Company	9
	[c] Sale of Shares in a Finnish Target Company	10
	[d] Repayments of Invested Capital	11
	[4] Real Estate Holding Transactions	12
	[a] Overview of the Taxation of Different Types of Real Estate Companies	12
	[b] Example of Real Estate Structuring	13

	[5] Finnish Entity as Acquisition Vehicle in Acquisition of a Foreign Entity	13
[E]	Anti-avoidance Provisions in Finnish Tax Legislation	15
	[1] General Rule	15
	[2] Tax-Neutral Business Reorganizations	15
	[3] Thin Capitalization	16
	[4] Hidden Dividend Distributions	16
	[5] Transfer Pricing	17
	[a] Arm's Length Principle	17
	[b] Transfer Pricing Documentation	18
	[6] CFC Legislation	19
II	TAXABLE ACQUISITIONS AND DISPOSITIONS	21
[A]	Asset Purchase and Share Purchase	21
	[1] Share Purchase	21
	[a] Consequences for Seller	21
	[b] Consequences for Buyer	23
	[c] Consequences for Target	23
	[2] Asset Purchase	24
	[a] Consequences for Seller	24
	[b] Consequences for Buyer	25
	[3] Share Sale versus Asset Sale	25
	[4] Sale of Partnership Interest	26
[B]	Treatment of Contingent Purchase Price/Contingent Liabilities	26
[C]	Allocation of Purchase Price	27
[D]	VAT and Other Transfer Taxes	28
	[1] VAT	28
	[a] Share Deals	28
	[b] Asset Deals	28
	[c] Other Aspects Relating to VAT	29
	[2] Transfer Tax	29
III	TAX-FREE ACQUISITIONS AND DISPOSITIONS	32
[A]	Types and Requirements	32
	[1] Tax-Exempt Sale of Shares	32
	[a] Consequences for Seller	32
	[b] Consequences for Buyer and Target	33
	[2] Tax-Neutral Transactions	33
	[a] Tax-Neutral Transfer of Business	33
	[b] Tax-Neutral Merger	34
	[c] Tax-Neutral Demerger (Division) and Partial Demerger	35
	[d] Tax-Neutral Exchange of Shares	35
[B]	General Consequences and Objectives	36
[C]	Cross-Border Transactions	37
[D]	Transfer Taxes	38

	[E] Treatment of Nonqualifying Mergers, Divisions, Transfers of Assets and Exchanges of Shares	38
IV	ATTRIBUTE PRESERVATION AND USAGE	38
	[A] Tax Losses	38
	[B] Effect of Change in Ownership and Permission to Retain Tax Losses	39
	[C] Tax Losses in Corporate Restructurings and Similar Transactions	40
V	DUE DILIGENCE AND CONTRACTUAL TAX PROTECTION	41
	[A] Due Diligence	41
	[B] Tax Indemnification and Other Contractual Provisions	41
VI	FINANCING AND DEBT PUSHDOWN STRATEGIES	42
	[A] Leveraging the Taxable Acquisition, Including Cross-Border Aspects	42
	[1] Restrictions to Deductibility of Interest and Thin Capitalization	42
	[B] Debt Pushdown Strategies	44
	[C] Other Ways of Maximizing Tax Deductibility of Interest and Acquisition Expenses	44
VII	DEALING WITH COMPENSATION PLANS	45
	[A] Treatment and Issues in M&A Context	45
VIII	GROUPING	46
	[A] Requirements	46
	[B] Consequences and Advantages	47
	[C] Departure of Group Member	48
IX	PLANNING WITH INTANGIBLES	48
	[A] Treatment of Transfers Offshore and Licensing Back	48
X	INTERNAL RESTRUCTURING INVOLVING FINNISH TARGET	49
XI	TARGET BREAKUP OR OTHER DISPOSITION OF UNWANTED ASSETS	49
XII	DEMERGERS - DIVISIONS	50
	[A] Domestic Treatment and Issues	50
	[B] Cross-Border Treatment and Issues	50
	[C] Other Issues of Special Concern in Finland	50
XIII	SUBSIDIARY LIQUIDATIONS	51
	[A] Domestic Treatment and Issues	51
	[B] Cross-Border Treatment and Issues	52
XIV	JOINT VENTURES	53
	[A] Structuring, Treatment and Issues in Cross-Border Context	53
XV	EQUITY AND DEBT RESTRUCTURING	53
	[A] Debt Modifications	53
	[B] Equity Modifications	54
XVI	CORPORATE EXPATRIATIONS/REDOMICILIATIONS	55
XVII	BUSINESS RESTRUCTURING	55

XVIII	FINNISH CORPORATION AS ACQUISITION VEHICLE FOR FOREIGN TARGET	55
	France	
	<i>Sophie Jouriaux, Agnès Charpenet, Michael Khayat, Xavier Berre and David Caupers</i>	1
I	INTRODUCTION	3
	[A] Overview of France	3
	[1] General Information	3
	[a] Location and Population	3
	[b] Constitution and Legal System	3
	[c] Economy and Trade Agreements	4
	[2] Investment Factors	4
	[a] Government Incentives	4
	[b] Foreign Investments Regulation	4
	[c] Sources of Finance	5
	[B] General Legal System	5
	[1] During an Audit	5
	[2] During the Adjustment Procedure	5
	[a] After Issuance of a Tax Reassessment Notice and before Tax Collection Notices	5
	[b] After Release of Tax Assessment and after Tax Collection Notices	7
	[3] Litigation Level	7
	[a] Ordinary Jurisdictional Procedure	7
	[b] Prejudicial Appeal before the French Constitutional Court	8
	[4] Non-contentious Request	9
	[5] Application for Payment Deferral	9
	[6] Competent Authority Process / EU Arbitration Convention	10
	[C] General Tax Environment	12
	[1] Overview of the French Tax system	12
	[2] Tax Burden in France	13
	[D] Characteristics Unique to France	13
	[1] Strict Territoriality Principle	13
	[2] Exception to Territoriality Principle – Controlled Foreign Companies Rules	14
	[a] Scope of CFC Rules	14
	[b] Taxation of Foreign Profits	15
	[c] Exceptions to the CFC Rules	15
II	TAXABLE ACQUISITIONS AND DISPOSITIONS	16
	[A] Sale and Purchase of Shares and Assets (Corporate Income Tax)	16
	[1] Acquisition through an Asset Deal	16

	[a] At the Level of the Selling Company	16
	[b] At the Level of the Acquiring Company	17
	[2] Acquisition through a Share Deal	18
	[a] Treatment of the Seller	18
	[i] The Seller Is a French Tax Resident	18
	[ii] The Seller Is a Foreign Tax Resident	20
	[b] Treatment of the Purchaser	21
	[B] Treatment of Contingent Purchase Price/Contingent Liabilities	21
	[C] Allocation of Purchase Price	22
	[1] Assets Deals	22
	[a] Transfer of Customers	22
	[b] Successor Convention	22
	[2] Share Transactions	23
	[D] Earn Outs	24
	[a] Treatment of the Seller	24
	[b] Treatment of the Purchaser	24
	[E] VAT and Other Transfer Taxes	25
	[1] VAT	25
	[a] Share Deals	25
	[b] Assets Transactions	26
	[2] Registration Duties	26
	[a] Share Transactions	27
	[b] Assets Transactions	28
	[c] Acquisition of Real Property Subject to VAT and/or Transfer Tax	29
	[i] Land to Be Built On (<i>Terrain à Bâtir</i>)	29
	[ii] Other Lands	30
	[iii] Building to Be Strongly Reconditioned	30
	[iv] VEFA (<i>Vente en l'état future d'achèvement</i>): sale before completion	30
	[v] New Building	30
	[vi] Building That Has Been Completed for More Than Five Years	30
	[3] Financial Transaction Tax	31
III	TAX-FREE ACQUISITIONS AND DISPOSITIONS	32
	[A] Types and Requirements	32
	[B] General Consequences and Objectives	33
	[1] Accounting Treatment	33
	[2] Tax Treatment	34
	[a] Standard Regime	34
	[b] Favourable Regime	34
	[C] Cross-Border Transfers	34
	[D] Transfer Taxes	35
	[E] Issues of Special Concern in France	35

	[1] Retroactivity	37
	[2] Carry Forward of Tax Losses	36
IV	ATTRIBUTE PRESERVATION AND USAGE	37
	[A] Change in Ownership Impact on Tax Assets	37
	[B] Change of Activity	38
V	DUE DILIGENCE AND CONTRACTUAL TAX PROTECTION	39
	[A] Due Diligence	39
	[1] Statute of Limitations	39
	[2] Specificity for Transparent Entities as Regards Corporate Income Tax	40
	[B] Tax Indemnifications and Other Contractual Provisions	41
	[1] Indemnifications	41
	[a] Treatment of the Seller	41
	[b] Treatment of the Purchaser	42
	[2] Earn Out	42
	[a] For the Seller	42
	[b] For the Purchaser	42
VI	FINANCING AND DEBT PUSHDOWN STRATEGIES	43
	[A] Leveraging the Taxable Acquisition, Including Cross-Border Aspects	43
	[1] Bank Loans	43
	[2] Shareholder Loans	43
	[3] Limitation of Deductibility of Financial Expenses Related to the Acquisition of Controlling Interests That May Give Rise to the Long-Term Capital Gains Regime	45
	[4] General Limitation of Deductibility of Financial Expenses	46
	[B] Debt Pushdown Strategies	47
	[C] Other Ways of Maximizing Tax Deductibility of Interest and Acquisition Expenses	47
VII	DEALING WITH COMPENSATION PLANS	48
	[A] Treatment and Issues in M&A Context	49
	[B] Any Other Issues of Special Concern in France	51
VIII	GROUPING	51
	[A] Requirements	51
	[B] Consequences and Advantages	52
	[1] General Tax Group Regime	52
	[2] Thin Capitalization Rules in the Framework of the Tax Group Regime	53
	[3] Limitation of Interest Deduction on Loan Granted for Acquisition of Companies from Entities Controlling the Tax Group (Charasse Amendment)	53
	[4] General Limitation of Deductibility of Financial Expenses	55
	[5] Departure of Group Member	56

	[a] Exit Situations	56
	[b] Consequences	56
	[i] De-neutralization	56
	[ii] Tax Losses	57
IX	PLANNING WITH INTANGIBLES	57
	[A] Local Regime (If Favourable)	57
	[B] Treatment of Transfers Offshore and Licensing Back (If Local Regime Is Unfavorable)	58
	[1] Royalty Issues	58
	[2] Valuation of Intangibles	59
	[C] Research and Development (R&D) Tax Credit	60
	[1] Eligible Expenses	61
	[2] Computation of the R&D Tax Credit	62
	[3] Use of the R&D Tax Credit	62
	[D] Innovation Tax Credit	62
X	INTERNAL RESTRUCTURING INVOLVING FRENCH TARGET	63
XI	TARGET BREAKUP OR OTHER DISPOSITIONS OF UNWANTED ASSETS	65
	[A] Target Breakup by Way of Intercompany Transactions	65
	[B] Target Breakup by Way of Transactions with Third Parties	66
XII	DEMERGERS	66
	[A] Domestic Treatment and Issues	66
	[B] Cross-Border Treatment and Issues	67
XIII	SUBSIDIARY LIQUIDATIONS	67
	[A] Domestic Treatment and Issues	67
	[1] Judicial Liquidation	67
	[2] Taxation of Shareholders	68
	[a] Registration Duties	68
	[b] Income Tax Triggered by Debt Forgiveness	69
	[3] Dissolution without Liquidation (Transmission Universel de Patrimoine)	70
	[B] Cross-Border Treatment and Issues	71
	[1] Liquidation Surplus Paid to Foreign Shareholder	71
	[2] Dissolution without Liquidation into a Foreign Merging Company	71
XIV	JOINT VENTURES	71
	[A] Structuring, Treatment and Issues in Cross-Border Context	71
	[1] Creation of the New Company	71
	[2] Dividend Payments	72
	[3] The Participation Exemption Regime for Dividend Income	73
	[4] The Additional Contribution on Distributed Income	74
	[B] Substantive Issues	75
	[1] Permanent Establishment/Residency	75
	[2] Transfer Pricing: Tangibles	76

XV	EQUITY AND DEBT RESTRUCTURING	80
	[A] Debt Modifications (Subsidies and Waiver of Debts)	78
	[1] For the Company Granting the Subsidy / Waiver of Debt	78
	[2] For the Beneficiary	79
	[B] Equity Modifications	79
	[1] Capitalization of Receivables	79
	[2] Capital Contributions to Ailing Companies	81
	[3] Coup d'accordéon	81
	[a] Overview	81
	[b] Accounting and Tax Consequences at the Issuing Company Level	81
	[c] Accounting and Tax Consequence at the Shareholder Level	82
	[i] Share Capital Decrease	82
	[ii] Share Capital Increase	82
	[iii] Subsequent Transfer of Shares	82
	[4] Share Buybacks	83
	[a] Corporate Income Tax	83
	[b] Registration Duties	84
	[C] Any Other Issues of Special Concern in France	85
XVI	CORPORATE EXPATRIATIONS	85
	[A] Transfer of the Registered Office of a French Company outside France	85
	[B] Transfer of the Registered Office of a Foreign Company to France	87
XVII	BUSINESS RESTRUCTURINGS	87
XVIII	FRENCH CORPORATION AS ACQUISITION VEHICLE FOR FOREIGN TARGET	88
	Germany	
	<i>Stephan Eilers and Martin Schiessl</i>	1
I	INTRODUCTION	3
	[A] Overview of Germany	3
	[B] General Legal System	3
	[C] General Tax Environment	4
	[1] General Principles of German Taxation	5
	[2] Income Tax (Einkommensteuer) and Trade Tax (Gewerbesteuer)	5
	[3] Corporate Tax (Körperschaftsteuer)	6
	[4] Value Added Tax (Umsatzsteuer)	6
	[5] Real Estate Transfer Tax (Grunderwerbsteuer)	7
	[6] Tax Administration	7
	[D] Characteristics Unique to Germany	8

II	TAXABLE ACQUISITIONS AND DISPOSITIONS	9
	[A] Treatment of Seller and of Target Entity	9
	[1] Seller's Tax Position	9
	[a] Sale of Assets by a Sole Proprietor	9
	[b] Sale of Assets by a Partnership	10
	[c] Sale of Assets by a Corporation	10
	[d] Roll-Over	10
	[2] Purchaser's Tax Position	11
	[3] VAT	11
	[4] Real Estate Transfer Tax	11
	[5] Typical Secondary Tax Liabilities for Purchaser	12
	[6] Acquisition of Partnership	12
	[a] Tax Aspects for Seller	12
	[b] Tax Aspects for Purchaser	13
	[c] Real Estate Transfer Tax	13
	[7] Differences between Publicly Held Target and Privately Held Target	13
	[B] Asset Purchase and Share Purchase	14
	[1] Share Purchase	14
	[2] Share Purchase / Level of the Target	14
	[a] Loss of Tax Losses	14
	[3] Loss of Interest Carried Forward	15
	[4] Share Sale and Purchase	15
	[a] Withholding Tax	15
	[5] Tax Liability in Case of a Tax Residence of the Transferor in Germany	16
	[a] Shares Held as Private Assets	16
	[b] Shares Held as Business Assets	16
	[6] No Tax Residence in Germany	17
	[7] Asset Purchase: Consequences to Transferor and Transferee	18
	[8] Focus: Real Property Holding Companies	19
	[9] Asset Deal	20
	[C] Treatment of Contingent Purchase Price/Contingent Liabilities	21
	[D] Allocation of Purchase Price	21
	[E] VAT and Other Transfer Taxes	22
	[1] VAT	22
	[2] Real Estate Transfer Tax	22
	[3] Notary Fees	23
III	TAX-FREE ACQUISITIONS AND DISPOSITIONS	23
	[A] Types and Requirements	23
	[1] Capital Gains Exemption	23
	[2] Sale of a German Branch	24
	[3] Sale of a Partnership Interest	24
	[B] General Consequences and Objectives	25

	[1] General Exemption for German Corporations with Corporate Subsidiaries	25
	[2] Re-exemption for Banks, Financial Institutions and Financial Holding Companies	26
	[3] Exemption Also Applicable for Capital Gains	26
	[4] Interplay with Treaty Exemptions	27
[C]	Cross-Border Transfers	27
	[1] Taxation of Dividends	27
	[2] No Special Rules on Capital Gains	28
	[3] Taxation of Income of the Holding Company from Foreign Non-corporate Subsidiaries	28
	[4] Qualification as a Share in a Corporation	29
	[a] Corporation Test	29
	[b] Share Test	30
	[5] Taxation of a Partnership as Holding Company	30
	[6] CFC Regime	31
	[a] General CFC Regime	31
	[b] Favorable Treatment of Subsidiaries in EU/EEA Countries	32
	[7] Tax-Optimized Inbound Acquisition	32
[D]	Transfer Taxes	32
	[1] VAT	32
	[2] Real Estate Transfer Tax	33
[E]	Issues of Special Concern in Germany	33
	[1] Asset Deal	33
	[2] Share Deal	34
	[3] Tax-Neutral Demerger	34
	[4] Other Structuring Considerations	35
	[a] No Cross-Border Fiscal Unity/Group Relief	35
	[b] Taxation of Dividends Paid by the German Holding Company to Its Ultimate Shareholder	35
IV	ATTRIBUTE PRESERVATION AND USAGE	35
[A]	Change in Ownership Impact on Tax Assets	35
	[1] Overview	35
	[2] Previous Loss-Trafficking Regime	36
	[3] Elements of a Harmful Change of Control	37
	[a] Harmful Transfer of Shares	37
	[b] Notion of Unused Losses	38
	[4] Exemptions from the Loss-Trafficking Rules	38
	[a] Intra-group Reorganizations	38
	[b] Mobilization of Built-In Gains	39
[B]	Allocation of Compensation and Other Deductions between Pre- and Post-closing Periods	40

V	DUE DILIGENCE AND CONTRACTUAL TAX PROTECTION	40
[A]	Due Diligence	40
	[1] General	40
	[2] Typical Risk Areas to Be Analyzed from a German Tax Perspective	41
	[3] Hidden Distributions of Profits	41
	[4] Transfer Pricing	41
	[5] Loss Carry Forwards and Interest Carry Forwards	42
	[6] Valuation of Assets in the Financial Statements	43
	[7] Fiscal Unity for Corporate Income Tax and Trade Tax Purposes	43
	[8] Fiscal Unity for VAT Purposes	44
	[9] Holding Periods	44
	[10] CFC Taxation	45
	[11] Adjustment of Input VAT	45
	[12] Real estate Transfer Tax	45
	[13] Tax Indemnity Obligations of the Target from Previous Transactions	46
[B]	Tax Indemnifications and Other Contractual Provisions	46
	[1] General	46
	[2] Tax Due Diligence	47
	[3] Buyer's Perspective	47
	[a] Tax Indemnity	47
	[b] Tax Reps and Warranties	48
	[4] Seller's Perspective	49
	[a] Tax Indemnity	49
	[b] Control Rights	49
	[5] Specific Matters	50
	[a] Asset Deal	50
	[b] Fiscal Unity	51
	[i] Income Tax	51
	[ii] VAT Aspects	53
	[iii] Partnerships	54
VI	FINANCING AND DEBT PUSHDOWN STRATEGIES	54
[A]	Leveraging the Taxable Acquisition, Including Cross-Border Aspects	54
	[1] Corporations	54
	[2] Partnerships	56
	[3] Limitation on the Deductibility of Interest	56
	[4] Arm's Length Principle	58
[B]	Debt Pushdown Strategies	58
	[1] Merger of the Acquisition Company with the Target Company	58
	[2] Creation of a Fiscal Unity	59

	[3] Collapse Merger of a Partnership	60
	[4] Leveraged Dividend Distribution	60
	[C] Other Ways of Maximizing Tax Deductibility of Interest and Acquisition Expenses	61
	[1] Double Dip	61
	[2] Act for Combating Tax Evasion	62
VII	DEALING WITH COMPENSATION PLANS	62
	[A] Treatment and Issues in M&A Contexts	62
	[1] Overview	62
	[2] Stock Options	63
	[a] General Tax Aspects	63
	[b] Specific Aspects of M&A Transactions	64
	[3] Other Share-Based Compensations	65
	[a] Restricted Stock	65
	[b] Stock Appreciation Rights and Phantom Stock	66
	[c] Other Forms	67
	[4] Pension Plans	67
	[B] Other Issues of Special Concern in Germany	68
VIII	GROUPING	68
	[A] Requirements	68
	[1] Corporate Income Tax and Trade Tax	68
	[a] Parties	68
	[b] Profit and Loss Transfer Agreement	69
	[c] Financial Integration	70
	[2] VAT Fiscal Unity	70
	[a] Parties	72
	[b] Financial Integration	72
	[c] Economic Integration	73
	[d] Organizational Integration	73
	[B] Consequences and Advantages	73
	[1] Corporate Income Tax	73
	[2] Trade Tax	74
	[3] VAT	74
	[C] Departure of Group Member	74
IX	PLANNING WITH INTANGIBLES	75
	[A] Local Regime	75
	[1] General	75
	[a] Definition of Intangibles	75
	[b] Definition of Goodwill	75
	[2] Basic German Tax Principles Regarding Intangibles	76
	[a] Intangibles	76
	[b] Goodwill	76
	[c] Amortization	76
	[3] Acquisition of Intangibles	77

	[a] Asset Deal – Seller's Tax Position	77
	[b] Asset Deal – Purchaser's Tax Position	77
	[c] Share Deal: Seller's Tax Position	78
	[d] Share Deal: Purchaser's Tax Position	78
	[B] Other Issues of Special Concern in Germany	79
	[1] Cross-Border Acquisition of Corporations and Intangibles	79
	[a] Asset Deal	79
	[b] Share Deal	80
	[2] Tax-Free Mergers and other Forms of Restructuring and Intangibles	81
X	INTERNAL RESTRUCTURING INVOLVING GERMAN TARGET	81
XI	TARGET BREAKUP OR OTHER DISPOSITION OF UNWANTED ASSETS	81
XII	DEMERGERS	82
	[A] Domestic Treatment and Issues	82
	[1] Scope	82
	[2] Basic Principles	82
	[3] Civil Law Procedure of a Demerger	83
	[4] Tax Consequences of Demergers	83
	[a] Split-Up and Spin-Off by a Corporation to Another Corporation	83
	[i] Tax Consequences at the Level of the Transferring Corporation	83
	[ii] Tax Consequences at the Level of the Absorbing Corporation	85
	[iii] Tax Consequences at the Level of the Shareholders	85
	[b] Split-Up and Spin-Off by a Corporation to a Partnership	86
	[i] Tax Consequences at the Level of the Transferring Corporation	86
	[ii] Tax Consequences at the Level of the Absorbing Partnership	87
	[iii] Tax Consequences at the Level of the Shareholders	87
	[c] Drop-Down	87
	[i] Tax Consequences at the Level of the Transferring Corporation	88
	[ii] Tax Consequences at the Level of the Absorbing Corporation/Partnership	89
	[iii] Tax Consequences at the Level of the Shareholders	89
	[B] Cross-Border Treatment and Issues	90
	[C] Other Issues of Special Concern in Germany	90

XIII	SUBSIDIARY LIQUIDATIONS	90
	[A] Domestic Treatment and Issues	90
	[1] Liquidation of a Corporation	90
	[a] Company Level	91
	[i] Corporate Income Tax	91
	[ii] Trade Tax	92
	[b] Shareholder Level	92
	[i] Corporate Income Tax	92
	[ii] Trade Tax	93
	[iii] Taxation of Private Investors	93
	[iv] Shares Held as Business Assets	93
	[v] Shares Held as Private Assets	93
	[vi] Treatment of Liquidation Losses	94
	[2] Liquidation of a Partnership	94
	[a] Corporate Income Tax	94
	[b] Taxation of Private Investors	95
	[c] Treatment of Liquidation Losses of Partnerships	95
	[B] Cross-Border Treatment and Issues	96
	[1] Liquidation of a German Subsidiary Having a Foreign Parent Corporation	96
	[a] Taxation of the Subsidiary	96
	[b] Taxation of the Shareholder	96
	[2] Liquidation of a Foreign Subsidiary Having a Domestic Parent Corporation	97
	[a] No Taxation of the Subsidiary in Germany	97
	[b] Taxation of the Distributed Liquidation Proceeds at the Level of the Shareholder	97
	[C] Other Issues of Special Concern in Germany	97
	[1] Reorganization of Assets	97
	[2] Tax Neutral Hive-Down	98
	[3] Applicability of Capital Gains Exemption and Seven Years Holding Period	98
	[4] Public versus Private Transactions	99
	[5] Other Tax Consequences	99
XIV	JOINT VENTURES	100
	[A] Structuring, Treatment and Issues in Cross-Border Context	100
	[1] General	100
	[2] Non-entity Joint Ventures	100
	[3] Choice of Entity and Structure of Joint Ventures	101
	[a] Domestic JVs	101
	[i] Partnership	101
	[ii] Corporation	101
	[b] Cross-Border JVs	102
	[4] Property Transfers on Formation	102

	[a] Treatment of Built-in-Gain or Loss	102
	[i] Transfer of Single Assets	102
	[ii] Transfer of Shares, Partnership Interests or Operating units	103
	[b] Indemnification Provisions	103
	[5] Compensation Planning	104
	[6] Allocation and Taxation of Operating Results	104
	[a] Corporations	104
	[b] Partnerships	105
	[c] Taxation of Distributions	106
	[i] Corporate Shareholder	106
	[ii] Partnership as Shareholder	106
	[d] Distributions by Partnerships Which Were Subject to the Reduced Tax Rate	107
	[e] Double Tax Relief	107
	[i] Foreign JV with German Participant	107
	[ii] German JV with Foreign Participant	108
	[7] Exit/Unwind Scenarios	108
	[a] JV as Corporation	108
	[i] Corporate Shareholder	108
	[ii] Individual Shareholder	108
	[b] JV as Partnership	108
	[B] Any Other Issues of Special Concern in Germany	109
	[1] Planning Techniques	109
	[2] Compliance	109
XV	EQUITY AND DEBT RESTRUCTURING	109
	[A] Debt Modifications	110
	[1] Debt Waiver	110
	[2] Conditional Debt Waiver	111
	[3] Debt Assumption	112
	[4] Debt-for-Equity Exchange	112
	[5] Debt Buy-Back	112
	[6] Creditor's Loss Deduction	113
	[7] Constructive Dividends/Income Adjustments	113
	[8] Loss Restrictions for Shareholder Loans and Shareholder Collateral	114
	[B] Equity Modifications	114
	[C] Any Other Issues of Special Concern in Germany	115
	[1] Internal Restructuring in Germany	115
	[a] Introduction	115
	[b] The Legal Framework for Internal Restructurings	115
	[2] Income-Based Taxation of Internal Restructurings	116
	[3] Transformation of a Corporation into a Partnership	117
	[a] Taxation at the Level of the Transferring Entity	117

	[b]	Taxation at the Level of the Receiving Entity	118
	[c]	Taxation at the Level of the Shareholders of the Transferring Corporation	118
	[4]	Merger and Demerger of a Corporation into a Corporation	119
	[a]	Taxation at the Level of the Transferring Corporation	119
	[b]	Taxation at the Level of the Receiving Corporation	119
	[c]	Taxation at the Level of the Shareholders of the Transferring Corporation	119
	[5]	Specific Requirements for Demergers	120
	[6]	Contribution into a Corporation	120
	[a]	General Remarks	120
	[b]	Taxation at the Level of the Receiving Corporation	121
	[c]	Taxation at the Level of Transferring Entity	121
	[d]	Sale of Newly Granted Shares as Opposed to Sale of Contributed Shares	122
	[7]	Change of the Legal Form of a Corporation into a Partnership and Vice Versa	122
	[a]	Conversion of a Corporation into a Partnership	122
	[b]	Conversion of a Partnership into a Corporation	122
	[8]	Value Added Tax	123
	[9]	Real Estate Transfer Tax	123
	[10]	Change-of-Control Rules	124
XVI		CORPORATE EXPATRIATIONS/REDOMICILIATIONS	124
	[A]	Tax Consequences at the Level of the Corporation	125
	[1]	Redomiciliation to Another EU Member State	125
	[a]	Permanent Establishment in Germany	125
	[b]	Allocation of Assets to a German Permanent Establishment	126
	[2]	Redomiciliation to a Non-EU Member State	127
	[3]	Ongoing Taxation	128
	[B]	Consequences for the Shareholders	128
	[1]	Interest Is Held as a Business Asset	128
	[2]	Interest Is Held as a Private Asset	129
	[C]	Possible Restructuring	130
XVII		BUSINESS RESTRUCTURINGS	130
XVIII		GERMAN CORPORATION AS ACQUISITION VEHICLE FOR FOREIGN TARGET	131
India			
		<i>Shefali Goradia</i>	1
I		INTRODUCTION	3
	[A]	General Legal System	3
	[1]	Foreign Investment in India	3

	[B]	General Tax Environment	6
	[1]	Scope and Framework of Taxation in India	6
	[2]	Role of Tax Treaties	7
	[3]	Taxation of Companies	7
	[a]	Corporate Tax	7
	[b]	Minimum Alternate Tax ("MAT")	8
	[c]	Dividend Distribution Tax ("DDT")	8
	[i]	Deemed Dividend in Certain Cases	9
	[d]	Royalty and Technical Services Fee	9
	[e]	Interest	10
	[f]	Capital Gains on Shares and Capital Gains on Assets other than Shares	10
	[4]	Holding Company Jurisdiction Analysis	12
	[5]	Taxability of Offshore Transfers	14
	[6]	Other Aspects	15
	[a]	Compliance Requirement	15
	[b]	Transfer Pricing	16
	[c]	Tax Incentives	17
	[7]	Dispute Resolution Mechanism	18
	[C]	Types/Classification of Major Business Entities	19
	[1]	Entry Options in India	19
	[a]	Liaison Office	19
	[b]	Branch Office	19
	[c]	Indian Subsidiary	19
	[d]	General Partnership and Limited Liability Partnership	20
II		TAXABLE ACQUISITIONS AND DISPOSITIONS	20
	[A]	Sale and Purchase of Shares and Assets	20
	[1]	Acquisition by Way of Purchase of Shares	21
	[a]	Consequences for the Acquirer	21
	[b]	Consequences for the Seller	22
	[2]	Acquisition by Purchase of Assets	22
	[a]	Consequences for the Acquirer	22
	[b]	Consequences for the Seller	22
	[B]	Treatment of Contingent Purchase Price/Contingent Liabilities	23
	[1]	Contingent Purchase Price	23
	[2]	Contingent Liabilities	24
	[C]	Allocation of Purchase Price	24
	[D]	VAT and Other Transfer Taxes	24
	[1]	VAT/CST	24
	[2]	Stamp Duty	25
III		TAX-FREE ACQUISITIONS AND DISPOSITIONS	25
	[A]	Types and Requirements	25
	[B]	General Consequences and Objectives	26
	[1]	Capital Gains Tax Exemption	26

	[2] Depreciation and Expenditure Accounting	26
	[3] Taxation of Shareholders in the Merging Company	26
	[C] Cross-Border Transfers	27
	[D] Transfer Taxes	27
	[E] Issues of Special Concern in India	28
IV	ATTRIBUTE PRESERVATION AND USAGE	29
	[A] Change in Ownership Impact on Tax Assets	29
	[B] Allocation of Compensation and Other Deductions between Pre- and Post-closing Periods	29
	[1] Set Off of Brought Forward Business Losses and Unabsorbed Depreciation in Case of Merger	30
	[2] Set Off of Brought Forward Business Losses and Unabsorbed Depreciation in Case of Demerger	31
	[3] Other Issues of Special Concern in India	32
V	DUE DILIGENCE AND CONTRACTUAL TAX PROTECTION	32
	[A] Due Diligence	32
	[1] Common Tax Due Diligence Issues	33
	[B] Tax Indemnifications and Other Contractual Provisions	33
VI	FINANCING AND DEBT PUSHDOWN STRATEGIES	34
	[A] Leveraging the Taxable Acquisition, Including Cross-Border Aspects	34
	[B] Debt Pushdown Strategies	35
	[1] Borrowings by an Indian Company	35
	[C] Other Ways of Maximizing Tax Deductibility of Interest and Acquisition Expenses	36
VII	DEALING WITH COMPENSATION PLANS	36
	[A] Treatment and Issues in M&A Context	36
	[B] Any Other Issues of Special Concern in India	37
VIII	GROUPING	37
	[A] Requirements	37
	[B] Consequences and Advantages	37
	[C] Departure of Group Member	38
IX	PLANNING WITH INTANGIBLES	38
	[A] Local Regime (If Favorable)	38
	[B] Treatment of Transfers Offshore and Licensing Back (If Local Regime Is Unfavorable)	39
	[C] Any Other Issues of Special Concern in India	40
X	INTERNAL RESTRUCTURING INVOLVING FOREIGN TARGET	40
XI	TARGET BREAKUP OR OTHER DISPOSITIONS OF UNWANTED ASSETS	41
XII	DEMERGERS	41
	[A] Domestic Treatment and Issues	41
	[1] Taxability in the Hands of Shareholders in Case of Demerger	42

	[2] Depreciation on the Assets Being Transferred	42
	[3] Allowability of Expenditure Relating to Demerger	42
	[B] Cross-Border Treatment and Issues	43
	[C] Other Issues of Special Concern in India	43
	[1] Demerger and Court Jurisdiction	43
	[2] Some Other Issues	43
XIII	SUBSIDIARY LIQUIDATIONS	44
	[A] Domestic Treatment and Issues	44
	[B] Cross-Border Treatment and Issues	44
	[C] Any Other Issues of Special Concern in India	44
XIV	JOINT VENTURES	44
	[A] Structuring, Treatment and Issues in Cross-Border Context	45
	[1] Tax Treatment for JVs	45
	[2] Tax Treatment If the Joint Venture Would Be Treated as an Association of Person	45
	[B] Any Other Issues of Special Concern in India	46
XV	EQUITY AND DEBT RESTRUCTURING	46
	[A] Debt Modifications	46
	[B] Equity Modifications	47
	[1] Share Buybacks	47
	[a] Exchange Control Regulations	47
	[b] Taxation of Share Buy-back	48
	[2] Capital Reduction	48
	[C] Other Issues of Special Concern in India	48
XVI	CORPORATE EXPATRIATIONS	48
XVII	BUSINESS RESTRUCTURINGS	49
XVIII	INDIAN CORPORATION AS ACQUISITION VEHICLE FOR FOREIGN TARGET	49